

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Peter Mueller	Group No. 3724
Application No.: 10/576,233	Examiner: P.H.Nguyen
Filed: January 12, 2007	Conf. 7089
For: METHOD AND DEVICE FOR SLICING FOOD BARS	

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Following a Final Office Action dated December 23, 2009, Applicants submit the present Request for Formal Review, by a panel of Examiners, of the legal and factual basis of the rejections pending in the present case, in accordance with the Pre-Appeal Brief Conference Pilot Program¹. Applicants believe that the issues presented are well posed for appeal, and request formal review prior to appeal on the following grounds:

BACKGROUND SYNOPSIS OF SUBJECT MATTER

The present claimed application relates to a device for slicing food product blocks.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

The office action alleges that it is unclear how the means/gripper of claims 26 and 55 are driven by the food product block and the conveying means when it has its own motor. In an advisory action more explanation is given as to the examiner's position. The advisory action provides, "that it is well known in the art that there are gears and linkages in the drive 15 connected to the grippers 18 for reciprocating the grippers 18. The disclosure does not explain how some of the gears and linkages are disconnected to allow the grippers to be driven by the food product

block and the conveying means, and then reconnected again to be pulled back to their upward ready-position by the drive 21.”

Foremost, the advisory action details the 35 U.S.C. § 112 rejection by discussing element 15 as the drive. Element 15 is a means as discussed in paragraph 0066 of U.S. Application Publication No. 2007-0214969. The advisory action then calls the drive 21. This explanation is confusing and it is not clear to the Applicants exactly why claims 26 and 55 are being rejected. Moreover, the advisory action states that “gears and linkages are disconnected to allow the grippers to be driven by the food product block and the conveying means, and then reconnected again to be pulled back to their upward ready-position by the drive 21.” Applicants are confused as to why the advisory action is stating that gears and linkages must be disconnected and reconnected in order for the gripper to be moved by the conveyor or food product block.

Applicants believe that one skilled in the art would understand how “the means is driven by the food product block, the conveying means, or both during said contact with the food product block.” Applicants further believe that one skilled in the art would understand how the means can be moved by the food product block or conveying means without taking the drive apart. However, Applicants believe that paragraph 0063 of U.S. Application Publication No. 2007/0214969 illustrates one non-limiting example of how the means can be “driven by the food product block, the conveying means, or both.” Paragraph 0063 states, “An example of a means which **may function simultaneously** as a **drive** and similarly to a **moveable bearing** is a cylinder, which, when acted upon by compressed air, constitutes a drive in the absence of pressure effects decoupling with regard to force between the central unit 20 and the gripper 18.” (emphasis added) Applicants believe that the rejection is improper and that the application provides an adequate written description. Therefore, Applicants respectfully request that the rejection be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

The Office Action rejected claims 24, 26, 27, and 31 – 35 under 35 U.S.C. § 102 as being anticipated by Toda (WO 00/59689). It is well settled that a claim is invalid as anticipated under 35 U.S.C. § 102 only if “a single prior art reference discloses either expressly or

¹ Official Gazette of the United States Patent and Trademark Office, vol. 1296, Number 2, (July 12, 2005).

inherently, each limitation of the claim.” *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 64 U.S.P.Q.2d 1202 (Fed. Cir. 2002). Specifically, the Office Action has failed to point out where Toda teaches all of the elements of claims 24 and 26. For example the Office Action does not show where Toda teaches “conveyed towards the blade,” of claim 24, or “the food product block is conveyed towards the blade by at least one conveying means,” of claim 26. Further, the Office Action has failed to show where Toda teaches “**connecting** a means to a end, remote from the blade” and “characterized in that contact between the means and the food product block **occurs only during slicing of the respective food product block**,” of claim 24. The office action has not provided any facts or evidence where Toda teaches a step of **connecting**, and Applicants believe that it is not taught in Toda. The office action has failed to show all of the elements of claim 26, for example, “at any desired time **during slicing** of the food product block, the **rear end of the food product block is brought into contact in each case with a means**.” Applicants believe that Toda does not teach that slices are cut from the loaf (i.e. “during slicing”) before the means is brought into contact with the rear end of the food product block. Please see, for example, figure 1, which illustrates a slice being cut off of the food product block with the means is **not** in contact with the food product block. Applicants do not believe that similar features are disclosed in Toda; therefore, Toda does not anticipate claims 24 and 26.

Claim 26 further states, “conveying the food product block towards the blade by at least one conveying means, wherein at any time during slicing of the food product block, the rear end of the food product block is brought into contact in each case with a means,” and “the means is driven by the food product block, the conveying means, or both during said contact with the food product block.” The office action calls element 38 of Toda a conveyor. Thus, if the conveyor of Toda is used to push the food product block during slicing, how is the office action alleging that the food product block is moved before the food product block and conveyor are in contact? The office action did not answer this question and actually poses a similar question on page 4, paragraph 8. The office action states, “It is to be noted that in the last two lines of claim 26, the means appears to be driven by its own motor but not by the food product block or/and the conveying means.” Therefore, the office action appears to suggest that Toda does not teach every element of claim 26. The Office Action failed to make any fact findings showing where Toda teaches any of these features. Applicants believe that the office action has not

presented a proper anticipation rejection of claims 24 and 26, and respectfully request that the rejections be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The Office Action rejected claims 29 and 49-51 under 35 U.S.C. § 103 as being unpatentable over Toda (WO 00/59689) in view of Holz (FR 2 677 573). The Office Action has failed to show where Toda teaches every element of claims 24, 26, and 55. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1070, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicants point out that the office action failed to show where Toda teaches "contact between the means and the food product block **occurs only during slicing of the respective food product block,**" (Claim 24) "at any desired time **during slicing** of the food product block, the **rear end of the food product block is brought into contact in each case with a means,**" (Claim 26) and "wherein the grippers attach the ends of the least two food product blocks **after slicing of the at least two product blocks has begun.**" (Claim 55) The office action has not presented any evidence where either Holz teach these limitations. Applicants do not believe that Holz cures this defect; therefore, Applicants respectfully request that the office action withdraw the rejections of claims 24, 26, 55, and their dependents.

CONCLUSIONS

Thus, it is respectfully submitted that a prima facie case of anticipation cannot be properly made or sustained based upon the reference relied upon by the examiner. Applicants, therefore, submit that claims 1-2, 4-5, 11-16, and 21-27 are patentable over Pohl. Allowance of claims 1-2, 4-5, 11-16, and 21-27 is respectfully requested.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

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